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EU TUNA FISHERIES ACCESS IN THE WESTERN INDIAN OCEAN

WITH AN ANALYSIS OF THE FISHERIES PARTNERSHIP AGREEMENT BETWEEN MADAGASCAR AND THE EU

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SUMMARY

This document presents a review of the draft protocol of the Fisheries Partnership Agreement (FPA) between Madagascar and the European Union for 2013-2014. It assesses how sustainability components and conditions are addressed in the FPA. The evolution of the agreement is briefly sketched since its inception in 1986. The protocol for 2007-2012 was analysed in the current perspectives of sustainability. In addition, the present FPA was compared with the FPAs of the EU with neighbouring countries in the Western Indian Ocean, notably Seychelles, Mauritius and the Comoros.

The aim of this paper is to identify improvements for sustainability performance of the EU-Madagascar partnership. The focus of the paper is on regulatory measures for responsible fisheries practices, rather than on better financial arrangements. At the same time it is recognised that good financial arrangements will enhance the success of sustainability performance. The main target species in the EU-Madagascar FPA are yellowfin tuna, skipjack and bigeye. Various species of sharks are also caught in non-trivial, commercially valuable volumes.

In May 2012 a two-years renewal of the EU-Madagascar FPA protocol was agreed between the two parties, which awaits confirmation by the respective governance procedures (EC, 2012a). The latest reform of the EU's Common Fisheries Policy (CFP) is to be concluded by the end of 2012 and could form an opportunity for more sustainability in FPAs. If the EU has the ambition to become consistent in its fisheries policies outside EU-waters, the so-called "external dimension" of the CFP, this may have a bearing on future FPAs.

The FPA between the EU and Madagascar allows EU-vessels to be licenced to fish in the Malagasy Exclusive Economic Zone (EEZ). The emphasis of the agreement is on the financial compensation for fishing licences, not on the management conditions. This perspective has changed little since 1986. The compliance level of the EU-vessels to the FPA conditions is limited, due to the lack of an effective fisheries management plan of Madagascar, a chronic underperformance of MCS and other necessary instruments. Fundamental components for sustainability are not referred to in the FPA-text, and a regional perspective, inter alia in the context of the Indian Ocean Tuna Commission, is virtually non-existent. IOTC has not yet established any reference points for target stocks. The new protocol for 2013-14 contains a catch limit for the first time in history of the FPAs. The catch limit of 200 tonnes is for the (by)catch of sharks, species that are not on IOTC-species list. Moreover the quota is for the total volume of sharks so not species related. Other management measures for the target species, yellowfin tuna, skipjack and bigeye have never been established to date in EU-Madagascar protocols.

Ideally, Madagascar should only allow foreign fleets to exploit the marine resources in its EEZ either with an operating fisheries management plan and other substantial precautionary measures. There has been little development of sustainability conditions in the FPA between Madagascar and the EU since 1986.

The partners should agree to an FPA that is based on regional minimum terms and conditions as agreed by the coastal states. Given the fact that all FPAs of the EU in the Western Indian Ocean are due to expire in December 2014, the coastal states should use the opportunity to jointly develop regional minimum terms and conditions. Such conditions should be based on internationally recognised standards and consistent with the EPA-policies, IOTC-decisions and other relevant arrangements. When the EU would be consistent in its policies, it should welcome such joint efforts and collaborate towards its success.

ABBREVIATIONS

ACP	African, Caribbean and Pacific
CECAF	Committee for the Eastern Central Atlantic Fisheries (FAO, West Africa)
CEU	Council of the European Union
CFP	Common Fisheries Policy (EU)
DWF	Distant Water Fleet
EC	European Commission
EESC	European Economic and Social Committee
EEZ	Exclusive Economic Zone
EPA	Economic Partnership Agreement
ESA	Eastern and Southern Africa (nations, in the EPA with the European Union)
EU	European Union
FA	Fisheries agreement
FAD	Fish Aggregating Device
FAO	Food and Agriculture Organization, UN
FPA	Fisheries Partnership Agreement
ICCAT	International Commission for the Conservation of Atlantic Tunas
IOTC	Indian Ocean Tuna Commission
IUU	Illegal, Unregulated and Unreported (fishing)
JC	Joint Committee (in EU fishing agreements)
JV	Joint venture
LL	Longline
MCS	Monitoring, Control and Surveillance
MPRH	Ministère de la Pêche et des Ressources Halieutiques, Madagascar
NGO	Non-governmental Organisation
OCT	Overseas Countries and Territories (France)
PS	Purse seine
RFMO	Regional Fisheries Management Organization
SFA	Sustainable Fisheries Agreement
SWIO	South Western Indian Ocean
UN	United Nations
VMS	Vessel Monitoring System
WCPFC	Western and Central Pacific Fisheries Commission
WCPO	Western Central Pacific Ocean
WIO	Western Indian Ocean
WTO	World Trade Organization

RECOMMENDATIONS

Minimum terms and conditions in the Western Indian Ocean

1. The current draft EU-Madagascar FPA for 2013-14 has the usual properties of mostly being about fishing opportunities and the financial consequences. EU fisheries agreements in the Western Indian Ocean should be formulated for fishing licenses that are conditioned to sustainable management. For species like migratory tuna this is best done at a minimum at a regional level in the South Western Indian Ocean, based on conditions that apply throughout the region;
2. Madagascar should be transparent to the EU and in the entire public domain about the details of the fishing agreements with all distant water fleets, to allow input for a sound management of the resource;
3. Madagascar should promote amongst its neighboring states the development of regional minimum terms and conditions for access, with a joint MCS and other fisheries conditions in the regional Exclusive Economic Zones (EEZs);
4. The Malagasy management should include all conservation and management measures adopted by IOTC for the main tuna species exploited in Malagasy waters. Madagascar should insist that foreign fleets fishing in its EEZ comply with all relevant IOTC resolutions;
5. Madagascar and the EU should restructure the Joint Committee of the FPA for it to become an advisory group for scientific and management issues to the partners. To enhance regional minimum terms and conditions, the Committee could be opened to observers, inter alia from neighbouring states, from scientific institutes and from civil society organisations;

Species

6. There should be a clear reference to the target species in any future agreement. Today there is no consistency in the target species in the FPAs. Most FPAs refer to the UNCLoS Annex of highly migratory species, which includes many species beyond tuna and tuna-like species, like sauries, dolphin fish, oceanic sharks and even whales and dolphins. For the Western Indian Ocean, the obvious choice would be to limit the target species to the list in Annex B of the IOTC agreement. Both the IOTC Annex B and the UNCLoS Annex I are included in this report as Annex 1.
In addition to the recent decision to include a bycatch quota for sharks, the EU and Madagascar should introduce catch limits for the target species. These should be based on reference points and other measures that ensure prudent management of the fisheries and that comply with relevant IOTC-measures;

Transshipments

7. The prohibition of transshipment at sea will be prohibited for EU-vessels from 2013. This prohibition should be applied to all foreign fleets and to all industrial fleets that are Madagascar flagged. All transshipments and landings should be inspected at entry points and in port, including of EU and Asian longline fleets;
8. A fisheries management regime should include reefers. It should be considered that reefers have an on-board observer for the entire time of their being in port;

9. Transshipments of tuna that are caught in the Madagascar EEZ should be levied, which could contribute to the management and inspection costs;

Regional approach

10. The coastal states should instigate a process for the development of regional terms and conditions for access in the South Western Indian Ocean that should become legally binding for all fisheries access. This will be advantageous to Madagascar and other South WIO states. It could for example be done in the context of the EPA that was ratified in May 2012. With the new Madagascar FPA ending in December 2014, all European FPAs in the SWIO end on the same date and this opens up an excellent opportunity for negotiating a regional approach of minimum terms and conditions in all future fishing access;
11. The coastal states could explore the introduction of compliance bonds, which would make up a financial penalty mechanism. The provisions should include failure to provide timely reporting of catch, catch location and other parameters. A compliance bond would form a financial safety fund against non-performance, since the regional states could draw upon the entire amount lodged instead of the sum assigned to each vessel. It would create an effective incentive to ensure that compliance and enforcement requirements are met;

Recommendations to Madagascar

12. Madagascar should commission an analysis and advice on the various (inter)national legal texts that are relevant for its fisheries agreements. Terms of reference should include an independent advice to Madagascar how to integrate the FPA in the IOTC and other relevant management regimes. It should include a draft proposal for a future framework for fisheries agreements that would fit a national/regional management strategy for sustainable fisheries;
13. Madagascar should identify and analyze the accumulative benefits and detriments of its fishing agreement with the EU and other distant water fleets. This implies de facto that Madagascar commissions its own evaluation, but then of all foreign fisheries access. Subsequently, Madagascar could develop a strategy on how to improve the agreements across the spectrum. This strategy should include a wider economic and ecological perspective and should not be restricted to direct financial compensation;
14. Madagascar should adopt the same minimum standards for all its fishing arrangements, including joint ventures and private agreements. Indeed such consistency should be applied across the region, when developing regional minimum terms and conditions;
15. Madagascar should consider linking the compensation for access to the market price of (canned) tuna;
16. Instead of predominantly looking only at direct compensation for fishing access, Madagascar should consider introducing a link between tuna access and the market price of canned tuna. In the first quarter of 2012, PFOI, the cannery in Antsinarana, paid € 1,150-1,350 for skipjack and € 950-1,850 for yellowfin (le Manach et al., 2012). This is in stark contrast with € 100/ton that Madagascar receives, i.e. € 65/ton from the EC and € 35/ton from the seiner owner;

Recommendations to the EU

17. The EU should negotiate that Madagascar accepts no transshipments at sea of any fleet, be it foreign or Madagascar flagged. This is in line with the EPA intentions and other internationally accepted standards. All transshipments should be registered in Madagascar. The EU should

demand from Madagascar that it demonstrates that compulsory transshipment in port applies to all fleets in its EEZ. This would imply: Never a vessel exit from the Madagascar EEZ with unregistered tuna;

18. The EU should encourage Madagascar to design and apply an adequate and sustainable fisheries management plan. The EU should use their existing mechanisms to contribute to such a plan, with financial and technical support;
19. The EU could develop consistent minimum standards for all its fishing arrangements to which all its fleets should abide;
20. The EU should share the FPA evaluation reports immediately with Madagascar and before negotiations commence, so that both parties can use the results;
21. Catch reports and vessel registration should be transparent across databases in the coastal state, EU-member state, European Commission and the IOTC;
22. The EU should improve its performance at the IOTC, including strong support for the adoption of explicit limit and target reference points, harvest control rules and harvest management strategies as well as fair country allocations to form a basis for good management;

Recommendations to Madagascar and the EU

23. Madagascar and the EU should introduce the obligation of a functioning MCS-system before allowing EU-vessels to fish in Malagasy waters. This should include compulsory reporting when entering or leaving the EEZ, and only transshipments in port of ALL catches in Malagasy waters, an adequate observer coverage of purse seiners that is at a minimum according to recommendations of IOTC, and an auditable and tested observer scheme for longliners;
24. Madagascar and the EU should make the foreign access to tuna dependent on reliable estimates of the surplus that are based on transparent and publicly debated assessments. It implies that there should be clarity about the total fishing capacity including all foreign fleets, quotas for all species and a determination how much of the quotas are reserved for Madagascar itself. IOTC Member States are strongly encouraged to continue the negotiations on quota allocation and to reach a fair agreement within reasonable timelines;
25. Madagascar and the EU should increase the number of on-board observers. This can be forced by re-introducing a significant compensation for vessels that do not have an observer on board.



1. THE FPA'S BETWEEN MADAGASCAR AND THE EU

Introduction

The European Union and Madagascar concluded their first bilateral fisheries agreement in January 1986. It resulted from the ratification by the EU of the UN Convention of the Law of the Sea (UNCLOS) and the accession of Spain and Portugal to the EU. Before that, European fishing associations, mostly Spanish and French, had private fishing arrangements with Madagascar and other states in the Indian Ocean.

UNCLOS Articles 62-65 describe the 'rights and plights' of coastal states to exploit the resources in their Exclusive Economic Zones (EEZs) and for Distant Water Fleets (DWFs) to exploit surpluses of those stocks that are not used by the coastal state. A stock surplus is the portion of a stock that is considered by the coastal state authority to be available after discounting the proportion for the coastal state's domestic fleets. The concept of a surplus stock is fundamental for fisheries agreements with DWFs, including with the EU. It presumes an understanding of the stock biomass and a prudent estimate of the surplus. In reality, neither of these features is known and when they are, usually with great uncertainty.

Sustainable fisheries management should be at the basis of determining the surplus. International agreements, UN conventions and EU policy all emphasize the need for managing fisheries in a sustainable manner, inter alia the FAO Code of Conduct for Responsible Fisheries (1995) and the UN Agreement on Straddling and Highly Migratory Stocks (1995). After the accession of Spain and Portugal into the European Union in 1986, the negotiation of the equal access to fish resource in the European EEZs required that the existing private agreements in third countries' waters were added as components to the Common Fisheries Policy (CFP).

Transparency is an important feature to support sustainability. Today the European Commission publishes a lot of materials on its bilateral fisheries agreements¹. The EC usually commissions an evaluation of its FPAs before they expire, to assist in the renewal negotiations. The EC is legally obliged by means of Council directions (EC, 2004) to publish these evaluations, but does not keep to a time constraint. The documents are seldom published until well after a new protocol has been agreed. In that tradition, the evaluation report for the EU-Madagascar 2007-2012 protocol was not available to Madagascar at the time of writing this report. This study therefore had to rely on the ex post evaluation of the previous protocol 2003-2007, which also contains a brief ex ante view for the current protocol (OD, 2006). The evaluation was performed by a consultants team, Oceanic Developpement, Megapesca and Poseidon, and it has been used here as a reference document. Valuable comments on FPAs were provided by a (not authored) recent EC-document of 2010, with an evaluation of the European FPAs including the one with Madagascar, in the light of the 2012 CFP reform (EC, 2010), and by a study for the British government (MRAG, 2007).

History

The first fisheries agreement between Madagascar and the European Union started in January 1986. Originally the fishing interest in the Madagascar Exclusive Economic Zone (EEZ) was not only for tuna, but also for experimental deep-water shrimp fishing. After three years this was abandoned and the fishing access became limited to tuna, although a clause on potential exploratory fishing for other species has always been retained.

¹ http://ec.europa.eu/fisheries/cfp/international/agreements/index_en.htm

The EU-Madagascar arrangement was renewed by protocols seven times. The current agreement came into force in 2007 and is valid for six years. That applied the new format of a Fisheries Partnership Agreement (FPA) to Madagascar for the first time, with a different flavor of partnership compared to the earlier arrangements. In May 2012, the parties agreed to the latest renewal, to come into place for two years from 1 January 2013 onwards. A selection of developments since 1986 is listed here²:

- 1. Number of licences.** The number of licenses for vessel access has more than doubled since the 1980s. For 2013-14, the number of licenses is again being reduced by 20%. But it should be noted that the financial compensation is not related to the number of licenses but to the reference tonnage level (see below);
- 2. Number of vessels.** There are today 492 EU-vessels registered in the IOTC, plus another 5 vessels to the French OCT (IOTC, 2012). IOTC estimated in 2010 that about 150 of those vessels were actively fishing. Registration in the IOTC does not require a justification of fishing activity in the regulated area, any vessel could be registered at no cost. The access to the whole Western Indian Ocean in effect has an open end. Applications for licenses to Madagascar are required for each vessel and the FPA limits the entries of EU-vessels to a maximum;
- 3. Longliners.** It appears that longliners do not provide (full) catch declarations to Madagascar. This has been publicly deplored by the IOTC. Longliners rarely come into port in Madagascar, nor do they have any Malagasy employees. As a consequence, the current added value for Madagascar is limited to the income from the license fees. This is expected to change with the compulsory transshipments in Malagasy ports in the new protocol;
- 4. Species.** The fact that the EU has negotiated the list of species in UNCLoS rather than that of IOTC has raised the suspicion that the (supposedly longliners) fleet has considerable catches of other species, like sharks that it would like to include;
- 5. Catch records.** There are doubts inside and outside Madagascar about the accuracy of reports and catch locations, particularly for longliners;
- 6. Local fishermen on board.** Until 2007, there was an obligation for each vessel to have Malagasy seamen on board, with the condition of payment in case of failure. In the current FPA this obligation has deteriorated to having ACP-nationals on-board, without any compensation clause in case there would be no such crew. The added value for Madagascar on top of the license fee is solely dependent on the number of port calls and the potential levies for landed volume for canning;
- 7. Maximum number of EU-vessels.** The maximum number of vessels in the agreement reached 125 vessels in 2007-2012. The new draft proposes a reduction to 96 vessels, which would still be more than double the number in 1989-1992. In the present circumstances of limited MCS, this implies higher risks of uncontrolled fishing, of overfishing and underpayment of license fees in the Malagasy EEZ;
- 8. Reference tonnage.** A confusing element is the existence of reference tonnages. While sometimes they appear to be maximum catch levels, they have nothing to do with quotas or other fisheries management conditions; the agreed catch levels are simply the result of a lower limit estimate by the fleet owners of what they expect to be catching in the period of the agreement. The annual target volume was 12,000 t in the 1980s, then declined to 9,000 t. It increased since 2001 to 13,300 t for the current FPA. The new agreed target for 2013-14 is 15,000 t;

² The 1986-1989 does not include several of the details that appeared in later protocols.

9. Financial compensation. The total compensation for EU-licenses has three components: (A) the reference tonnage determines a guaranteed minimum payment by the EU to Madagascar, (B) the “sectorial payment”, an additional specified amount by the EU to support the sectorial policy, and (C) an annual contribution by each vessel owner per ton when he applies for the license. The reference tonnage is a direct subsidy from the European Union as a contribution to the license fee. It originally was € 50/ton until 1998, after which it was reduced to € 32 and even less than € 30/ton. In the current FPA, the EU contribution is back up to € 65/ton, consistent with all other FPAs. In the case of the draft 2013-14 agreement, the agreed catch level is 15,000 tonnes, bringing the guaranteed minimum EU-compensation for the licenses to € 975,000.

The total public costs for the EU of an access agreement include both amounts (A) financial compensation for licenses and (B) the support to the sectorial policy. The Table in Annex 1 shows that the EU paid € 90/ton in 2007-12 and € 100 for the future 2013-2014 protocol, versus € 91.66 in 1989-92. It is virtually the same absolute amount per ton, but when considering inflation over a period of over 20 years, the EU pays considerably less per tonne today.

The third component of the license fee (C) is the vessel owners’ payment to the coastal state increased from € 20/ton in 1989-2001 to € 35/ton today. The reference level of tonnage has increased, implying a higher compensation. The “support for the sectorial policy” decreased accordingly. After having been by 15% reduced over years, the total EU compensation of € 100 per ton for 2013-2014 is not much higher than the 1989-1992 level of € 92 ton. Since the FPAs were introduced, the Commission claimed that it intended to further reduce the public contribution, but this has not yet occurred.

Each vessel owner has to pay an advance of € 35/ton. The minimum payment is determined by the reference tonnage for vessel owners. This increased from 75 t to 140 t for seiners. It implies that a purse seine vessel would need to pay at least $140 \times € 35 = € 4,900$ for a license in the 2013-2014 protocol. For the surface longliners this advance payment increased from 25 t to 105 t for vessels >100 GT. This amount is only paid by vessels that apply for a license in any given year;

10. Transshipments. There has never been a clear clause to prohibit transshipments at sea. With an incomplete MCS-system, this allows vessels to catch tuna and transship them to a reefer, thus going unnoticed by the Malagasy inspection. The new obligation of transshipment in port in the 2013-14 protocol should have major consequences and one could anticipate an improved MCS as a result. The tracking of longliners and their catch records could improve substantially. It still does not prevent vessels to transship their cargo outside the Malagasy EEZ in international waters;

11. MCS. Apparently, despite the financial contribution for sectorial activities, the MCS-system is still far from effective. The lack of MCS encourages illegal activities of EU-flagged vessels. This further undermines the effect of the new transshipment prohibition in the 2013-2014 protocol;

MADAGASCAR –EU Fisheries access agreements										
	1986-1989	1989-1992	1992-1995	1995-1998	1998-2001	2001-2004	2004-2007	2007-2012	2013-2014	
# seiners	-	45	42	42	45	40	40	43	40	
# of longliners	-		16	16	30	40	40	76	56	
Total	-	45	58	58	75	80	80	119	96	
minimum tonnage/year		12.000	9.000	9.000	9.500	11.000	11.000	13.300	15.000	
fin. compensation minimum/year	€ 15.000	€ 600.000	€ 450.000	€ 450.000	€ 304.000	€ 308.000	€ 320.000	€ 864.500	€ 975.000	
annual fee for other activities	-	€ 500.000	€ 275.000	€ 275.000	€ 456.000	€ 517.000	€ 505.000	€ 332.500	€ 525.000	
total EU compensation	-	€ 1.100.000	€ 675.000	€ 725.000	€ 760.000	€ 825.000	€ 825.000	€ 1.197.000	€ 1.500.000	
-fin. compensation minimum/tonne/ year										
B - annual fee for sectorial support	€ 20	€ 42	€ 31	€ 31	€ 48	€ 47	€ 46	€ 25	€ 35	
compensation per tonne										€ 35
C – advance seiners reference tonnage	750	2.250	75t	75t	100t	100t	112	112t	140t	
C - „ longliners reference tonnage			25t	25t	55t or 40t	66t or 44t	70t or 48t	100t or 48t	105t or 50t	
C	€ 20	€ 20	€ 20	€ 20	€ 20	€ 25	€ 25	€ 35	€ 35	
A+B+C, total compensation/tonne - EU+vessel owners		€ 112	€ 101	€ 101	€ 100	€ 100	€ 100	€ 125	€ 135	
# of seamen on board	2 Malagasy for fleet	2 Malagasy for fleet	2 Malagasy for fleet	2 Malagasy for fleet	6 Malagasy for fleet	40 Malagasy for fleet	40 Malagasy for fleet	20% of fleet of ACP- origin	20% of fleet of ACP- origin	
transhipments at sea	allowed	allowed	allowed	allowed	allowed	allowed	allowed	allowed	prohibited	
observers at request of Madagascar	+	+	+	+	+	+	+	+	+	
distance to FADs of Madagascar	-	1.5nm	1.5nm	1.5nm	1.5nm	1.5nm	1.5nm	3nm	3nm	
coastal zone	2nm	-	2nm	2nm	10nm	12nm	12nm	12nm	20nm	
Joint Committee	+	+	+	+	+	+	+	+	+	

Table 1. The evolution of a selection of conditions in the consecutive protocols for the Madagascar - EU fisheries access arrangement since 1986. The name was changed in “Fisheries Partnership Agreement” in 2007.

- 12. Observers.** So far, coverage by Malagasy observers on board the tuna vessels has been limited. The current protocol includes a reference advance payment of 112 tons while it is very likely the vessels tonnage capacity is much higher. It remains unclear whether the associated extra compensation by vessels was duly paid
- 13. Joint Committee.** The Joint Committee (JC) was installed in the first agreement in 1986. The FPA in 2007 introduced an Article on scientific cooperation, to be done under the umbrella of the Joint Committee. The dialogue in the Joint Committee on the evaluation of the Protocol is infrequent. The evaluation report of May 2006 mentions that no meeting had taken place since 2002 (OD, 2006). During the current FPA, there were meetings in April 2008 and May 2012. Two technical meetings took place in 2010 and 2011 (EC, 2012a). Specifying further tasks to the Joint Committee could assist in improving the quality of the FPA-performance and the relationship between the two parties.
- 14. Transparency of evaluations.** The ex ante and ex post evaluations carried out for the EC were not available on time to the Madagascar delegation. This is a breach of the intentions of collaboration in the FPA and the EPA between the parties and of the claimed support by the EC to ensure the partnership in the FPA.

A comparison between the arrangements between Madagascar and the EU over time provides valuable insight, irrespective of the quality of the components and of any value judgments about them. A pertinent observation is that the protocols continue to focus on the fishing opportunities and the direct compensations. While article 7 of the 2007-2012 protocol and articles 3 and 4 in the 2013-2014 protocol are all about responsible fisheries, they merely refer to the opportunity for Madagascar to allocate the financial compensation to initiatives within the Madagascar sectorial policy. This would be better implemented by Madagascar in a multi-annual sectorial fisheries programme, in consultation with the EC. Sadly, little of this has happened and there is no indication that the EU has offered any specific assistance to support this. Other than references to apply Monitoring, Control and Surveillance, the necessary details about fishery management conditions towards sustainable exploitation are absent from the protocols.

In summary, the benefits for Madagascar have changed only marginally in 25 years of protocols. The total compensation per ton catch changed from € 112 for 1989-1992 to € 132/ton for the draft 2013-2014 protocol, by adding the EU-compensation and the vessel owners' contributions. Meanwhile, the ex-vessel price paid in early 2012 by PFOI, the cannery in Antsinarana, is € 1,150-1,350 for skipjack and € 950-1,850 for yellowfin. Manach et al. (2012) propose the license fees to be linked to the recent ex-vessel prices.

The Malagasy government is the responsible authority for the fisheries management in its waters. OD (2006) refers to the fact that Madagascar sells licenses to other fleets as well, but without adequate control of the legitimacy of licenses. So it could happen that licenses are provided to various vessels that were on the IOTC-blacklist in 2002-2006. Since then, little has changed and there is not a good understanding of the activities at sea. Particularly the whereabouts and activities of longliners are difficult to track. The IOTC is in the process of formally adopting agreed TACs, but that takes a long time.

Social and socio-economic elements are addressed in the agreements, but seldom well specified. Results are dependent on intersessional work by both parties. This could in theory be done in the Joint Committee between the partners, but in reality the Joint Committee does not meet frequently. There were no meetings in the period 2002-2006 (OD, 2006). For the current FPA the Joint Committee met four times, two of which were technical sessions and the latest one was during the negotiation of the new protocol in 2012 (EC, 2012b). The report is about the status

quo of licenses, catches and payments, rather than technical issues or fisheries management, let alone towards sustainability conditions. OD (2006) states that for the 2004-2006 agreement the social issues were limited to the conditions for Malagasy seamen on-board. There are also indirect social consequences of the FPA, since landings to the cannery in Antsinarana provide for jobs in the factory Pêche et Froid Océan Indien (PFOI). The cannery is owned by the "Thunnus Overseas Group" of the Côte d'Ivoire-Lebanese businessman M. Mohamad Khachab. Most of the benefits accrue to foreign partners.

The draft Madagascar-EU fisheries protocol for 2013-14

An overview of elements in the subsequent fisheries access protocols between the EU and Madagascar since 1986 is given in Table 1 on page 11. This section includes observations on the draft text of the latest protocol that was agreed in May 2012.

Period

Unlike previous fisheries agreements, the new draft FPA between Madagascar and the EU covers only a (short) period of two years until the end of 2014, so all FPAs in the south Western Indian Ocean will end on 31 December 2014. This offers a unique opportunity of seeking a joint regional access arrangement from 2015 onwards.

Species

The European Union generally refers to a category of tuna agreements, which includes the Western Indian Ocean countries. For example, the FPAs with Solomon Islands, Federal States of Micronesia, and São Tome all refer to tuna. Also the Madagascar protocol used to be targeting tuna. The 2004-2006 agreement is on "tuna fishing opportunities" (EC, 2005a). Gradually, the EU introduced into its FPAs a reference to the species in Annex I to United Nations Convention. The UNCLoS list includes pomfrets, mahi mahi, sharks, and whales and dolphins. This change also occurred in the 2007-2012 FPA with Madagascar and is now referred to in almost all FPAs in the Western Indian Ocean and in the Atlantic, for example with Cape Verde and Ivory Coast. The sole exception in WIO is Seychelles, where the FPA refers to tuna and tuna-like species as in the IOTC. The consequence of this change is that all these species could currently be argued as included as species that are allowed to be landed as (by)catch, although the original intention of the agreements was to target tuna.

More importantly, the EU set a precedent in its tuna agreements by agreeing to a catch quota of 200 tonnes/year. This is for the (by)catch of several shark species only, and not for the formal target stocks. Since all non-tuna and tuna-like in the UNCLoS list are not regulated in the Indian Ocean in an RFMO, fishing for those species should be considered IUU-fishing, as they are unregulated and often unreported. It is imperative that target species in agreements in the SWIO are listed as in the IOTC, instead of a reference to the UNCLoS list. See Annex 1 for the IOTC and UNCLoS lists.

Maximum number of licences

In the draft 2013-14 protocol, the maximum number of licences was reduced from 50 seiners and 76 longliners in the 2007-12 protocol to 40 seiners and 56 longliners in the 2013-14 draft protocol. Meanwhile the minimum tonnage of tuna that Madagascar is to be compensated for increased with more than 10% to 15,000 tonnes of tuna. It once again confirms that there is no clear relationship between the number of vessels and the reference tonnage.

Reference tonnage

The reference tonnage of the draft new agreement is 15,000 tons, >10% more than the current protocol with 13,300t. The reference level determines the minimum amount of financial compensation by the EU, it has no relationship whatsoever with the existing biomass, a quota or any IOTC recommendations.

Financial compensation

The minimum compensation for the catches by the European Commission remained the same in the new 2013-2014 draft protocol, namely € 65/tonne. The target of the EC is to provide a total direct compensation of € 100/tonne, and the ship owners' contribution has also remained € 35/tonne³. The previous strategy of the EC to gradually reduce its contribution apparently has been dropped, since today the same compensation level appears in most FPAs.

The complementary fee for the sectorial support programme increased by over 50% to € 525,000/year. The total compensation to Madagascar is well behind all other coastal states in the Western Indian Ocean, as can be observed in Table 2 on page 20. Mauritius negotiated the highest EU-compensation of € 123/tonne. Note that this is exclusive of the advance payments by the vessel owners.

Advance payments of vessel owners

The FPAs define an advance for all vessel owners to be paid before receiving a licence. When the licence possibilities would be fully used by the EC-fleets, the maximum advance in the 2013-14 FPA would be a compensation for about 10,270 tonnes⁴. This is about 2/3 of the 15,000 tonnes for which the EC pays an advance.

Number of seamen on board

There has been no change from the 2007-12 protocol in the provision of the number of local crew on board. The most notable change for Madagascar took place in 2007, when the provision changed from compulsory Malagasy crew was relaxed to ACP-nationals. This is obviously less favourable for Madagascar. It is noteworthy that in the past the EC would pay compensation when there would be no observers, but this provision is not included since 2007.

Transhipments

Transshipment at sea in the Madagascar EEZ is formally prohibited in 2013 and 2014. All transhipments need to be in Malagasy ports, and ports have been identified, Antsiranana for seiners and Toliara, Ehoala and Toamasina for longliners. This is a major change in the new protocol, and implies the potential for sustainability improvements when Madagascar is able to ensure the compliance of this clause. It remains to be seen whether the longliners will declare more landings in Malagasy ports, or that they will use reefers in international waters for their transhipments.

Observers on board

It is entirely dependent on the ability and interest of Madagascar to offer observers. The chapter

³ Seychelles has the exception in its FPA, with a flat rate for purse seiners of € 61,000. For longliners the EU-Seychelles FPA also has a € 35/ton compensation level.

⁴ When 40 seiners pay for 140 tonnes each it implies 5,600 tonnes; 34 >100 GT longliners pay in total for 3570 ton, and 22 <100 GT contribute for 1,100 ton. These are maximum numbers, not all potential licences may be used every year.

on observers has only one substantive change in the 2013-2014 protocol. The obligation to take on board observers is not for the longline fleet anymore.

Protected zones

The protection of the coastal zone has been extended from 12nm to 20nm.

Interests of the European Union

Several conditions in the Madagascar-EU protocols appear to have become less satisfactory since 1986 to the EU and/or the EU-fleets, inter alia:

Sector support

The EU could be disappointed about the results of the sectorial programme that is funded i.a. by the FPA. The compensation for sectorial support is the responsibility of the Malagasy government, according to Article 7 of the current protocol. The evaluation of the previous agreement indicates that the results have been limited (OD, 2006). The EC would have an option of seeking an adjustment when the results would not be in line with the programme.

Species

The species definition of several shark species and families in the 2013-2014 draft protocol is the first of its kind in European FPAs. And setting a catch limit (of 200 tonnes per year) is another unique feature, since to date fishing on target species of tuna or any other pelagic species in the Western Indian Ocean has never been limited by a catch quota. It appears that the EU-delegation had a strong incentive to include at least several oceanic sharks; it certainly did not want to restrict the species to for example the IOTC-list. The reference to the UNCLoS list only started appearing in FPAs since 2005.

Taxpayers' money

The European Union continues to pay public money to compensate for the fisheries licences. While the Commission intended to reduce the public European contribution from € 65/tonne, the draft protocol still secures € 100/tonne taxpayers' money, when including the associated support for "sectorial development" paid by public EU-funds.

Joint Committee

Meetings of the Joint Committee take place on an irregular basis. None took place between 2002 and 2006. Since 2007, there were one Joint Committee Meeting and two technical sessions (EC, 2012a). The meeting in May 2012 was adjacent to the renegotiation session and only addressed licences, catch levels and payments. The Joint Committee reports little scientific work. Instead it should be a requirement for the partners to receive advice on stock status and other components needed for sustainable fisheries.

Other agreements

Madagascar does not provide an overall view of total fishing efforts in its EEZ. There is no transparency of effort or catch levels of the different fleets, preventing Madagascar and the EU from regulating the EU-fleet to adequate levels. The context for this this remains unclear, since it would be in both parties interest to acknowledge all fishing effort.

Regional minimum terms and conditions

The EU fishing agreements have experienced increasing public pressure to become more transparent. Making the documents public is probably the best progress of the FPA-era. It is the main reason that the EU-agreements are subject to scrutiny, while other bilateral or private agreements with distant water fleets operate in the shade of the unknown.

On the other hand, the negotiations for FPAs are still quite obscure. The delegation of the EC can use means to put pressure on the Madagascar delegation, like warnings that they may influence aid programmes and through direct contacts with ministers or the president. Because Madagascar and other coastal states are generally dependent on the EU's support, it makes the negotiation and hence the resulting text of the FPA unbalanced.

Public availability makes an analysis of the EU-Madagascar FPA possible to some extent. In the past 25 years the emphasis has been on the financial compensation for licences, not on the conditions for fishing. This changed only marginally with the introduction of the Fisheries Partnership Agreement in 2007, despite the ambition on paper to introduce more equity and sustainability. The main change was the change of directed support from targeted actions to a sectoral fisheries policy. Table 1 on page 11 confirms that the EU's total financial compensation has changed little since 1986.

Previous analyses of EU fishing agreements seldom addressed the implied sustainability conditions, but rather comment on changes in the number of vessels, compensation or reference catch levels, which have more economic than ecological impact. Notable exceptions are ADE (2002) and MRAG (2007), which provide advice much of which is still valid today.

Monitoring, Control and Surveillance

An inadequate MCS regime is a bottleneck for managing fisheries in a sustainable manner. Looking back at 25 years of EU fishing agreements, Madagascar and the EU have not succeeded in establishing an MCS regime that gives sufficient confidence in verifying the catches and FPA-conditions in Madagascar waters. To tackle this hurdle, Mfodwo and Barnes (2012) proposed an introduction of a so-called compliance bond. The different fishing associations would become jointly liable for violations by their vessels. The provisions in the bond could include failure to provide timely reporting of catch, catch location and other parameters as to be determined. A compliance bond would form a better financial safety fund against non-performance, since Madagascar could draw upon the entire amount lodged instead of the sum assigned to each vessel. This would create an effective incentive to ensure that compliance and enforcement requirements are met. Such co-responsibility is a well-established principle of criminal, corporate, administrative and environmental law. The creation of a compliance bond may be worth exploring. To illustrate the case: In 2011, a study was done on fisheries in Mozambique, comparing foreign tuna catches declared in the 2010 annual company report with the tuna catches declared by the masters of the fishing vessels upon entry/exit reports for the 2010 fishing season. In the study, two of eleven French purse seiners fishing in the Mozambican EEZ had correctly reported their tuna catches in 2010 (FIS, 2011).

In the current Madagascar FPA, on-vessel monitoring is only allowed for longliners of more than 250 GT on the basis of 10% sampling on the basis of the fleet concerned. According to the protocol seiners cannot be inspected upon leaving Malagasy waters. Signals of under-reporting also exist in Madagascar, where unconfirmed anecdotes indicate that longliners may not pay the full licence fee that would be required for their catch volume.

The real concern is that the current MCS-system is still inadequate to ensure an acceptable compliance level. It is primarily the responsibility of Madagascar to develop this, investing in

a functioning MCS could provide economic returns in the short term. Given the economic and political instability, assisting in the development of an MCS-regime in Malagasy and beyond in the WIO could be a task for the EU in improving the compliance.

Most neighbouring states in the Western Indian Ocean suffer from the same pitfall. In its new FPA (2012-2015), Mozambique and the EU introduced an annual inspection of 33% of the licenced vessels that have to come into port in advance of their fishing activities. The new clause in the draft Madagascar 2013-2014 protocol of 100% transshipments in port, including for all longliners, could in theory contribute to reducing opportunities for illegal reporting practices.

The monetary value of the EU-Madagascar FPA

A study on monetary value of FPAs was done for the European Commission DG Mare (EC, 2010). The option was analysed of passing on all licence costs to the vessel owners. The main conclusion was: *“For tuna vessels, it is likely that the EU ship owners will not be in a position to substitute for the EU for payments to Coastal States. The final cost of access is likely to be a compromise between the current payments and the cost of private licences. If not, the international competitiveness of the EU fleet will be undermined; up to a point where flying the EU flag will be a disadvantage. According to the latest economic data on the sector and likely projections for the recent past, the EU vessels may not be profitable enough to sustain a substantial increase in license fee”*.

The report triggers several observations: Firstly, without the EU contributions to the licence fees (i.e. subsidies), the fleets are expected to seriously reconsider fishing in third countries' EEZs. Their profitability is considered to become too marginal. But several associated arguments can be included in the context. The fact that the EC or any distant water fleet nation contributes to the cost of fleet access is a form of unfair competition, which in most European nations would not be allowed by the anti-trust authorities. It should become common sense that, when the costs of a fishery are too high to operate, then there would be no future. An interesting test will be the effect of the new Mauritania protocol in West Africa in August 2012. The small pelagic fleet announced that it would stop fishing in Mauritania because of (1) the increased vessel contribution and (2) the 60% minimum of Mauritanian crew, raised from 37%. The EC-report anticipated that *“..., increasing the costs of license for small pelagic trawlers will align the cost of access with the cost of private licenses (example of Mauritania) with no sensible impact on vessel's profitability”*. But the real issue for the small pelagic fleet in Mauritania seems that the coastal zone protection was extended to 20nm, while the catches had been mostly in the 12-20nm coastal strip.

Secondly, genuinely sustainable fisheries management involves for many fisheries investments in governance, MCS and research. Those costs should become part of the economic equation of costs versus benefits. For tuna fisheries this may involve a considerable investment in governance, given the current status quo of the RFMOs.

Thirdly, many of the assessments of fishing opportunities look at cost reduction. But as long as the profit margins of tuna fisheries are small with the bulk going to canneries, there would be merit in investing in research and marketing for quality products with higher added values.

There is no unequivocal way to assess the full potential value of an FPA. Several studies made attempts to quantify the economic value of the EU-Madagascar FPA. A recent study by Mfodwo and Barnes (2012) compared the income from license fees and associated values to the monetary valuations of tuna catches by IOTC (2012), combined by estimates of catch locations. It is concluded that payments are 5-7% of the nominal rate of return for the fleet. But Mfodwo and Barnes did not include an estimate for the potential IUU fishing that could well take place, given the lack of adequate monitoring, control and surveillance. They also avoided an estimate for the

resource rent of the tuna that would need to be valued for a full evaluation. This would become a complex analysis without straightforward assumptions.

Irrespective of the value of their estimations, they offer interesting advice to coastal states to introduce “compliance bonds”. Licences would be conditioned to participation in the compliance bond with a financial contribution, either by vessel or by company. The compliance bond would be based on the principle that the fishing industries will be held jointly liable for violations by their vessels, such as failure to provide timely reporting of catch and other parameters as required under access agreements, calling into port for transshipments, etc.

Conclusion

The FPA between Madagascar and the EU is a long way from reaching sustainability. This paper identifies many of the relevant issues. Madagascar and the EU should consider the ambition of concluding a genuinely sustainable fisheries agreement.

Crucial barriers to more sustainability appear to be (1) the capacity and willingness of Madagascar to build a fisheries management plan with associated operational capacity, (2) the continuing lack of regional minimum terms and conditions for access to tuna resources in the SWIO, and (3) the apparent lack of interest of the EU to genuinely pursue such a management plan, which is needed in order to establish its sustainability ambition in the FPA. Both FPA-parties should ensure that the Joint Committee operates effectively, and the existing clause should be applied to change the financial compensation for the sector when the results are unsatisfactory.

It would be more effective when the EU and the coastal states in the region would be prepared to consider regional minimum terms and conditions for fisheries access. It is in the interest of Madagascar to join forces with the neighbouring countries to develop a regime for fisheries access on a regional level. The SWIO fishing nations could join in an alliance to strengthen their regional fisheries and seafood positions.

Recently the EU concluded an Economic Partnership Agreement (EPA) with six WIO nations, Seychelles, Comoros, Mauritius, Madagascar, Zambia and Zimbabwe, already provides directions how the coastal states could operate jointly. The EPA has several references to fishing access arrangements. Several important fishing nations in the SWIO are not included, notably Mozambique, Tanzania and Kenya. Earlier analyses on EU’s economic partnership agreements and fisheries (e.g. CFFA, 2006) advise that adequate studies and preparation are a prerequisite to draw conclusions for regional approaches. Chapter 4 briefly describes the EPA in the region.



2. MADAGASCAR, FPA'S AND THE CFP REVISION

The current Common Fisheries Policy of the EU dates back to 2002. It does not include any legislative reference to fisheries policy outside EU-waters, and this had to be repaired in the subsequent years. For fisheries access, the current core policy document contains the Fisheries Council Conclusions of July 2004 (EC, 2004). Based on these conclusions and on an earlier communication by the European Commission (EC, 2002), the European Commission developed an accessible paper on the external fisheries policy (EC, 2005b).

Until that date, the "external fisheries policy" is still not a formal part of the CFP. This is expected to change in the expected 2012 reform. The latest draft of the CFP-text contains two titles and six articles on the external policy, thus formally embedding it in the EU's policy after adoption (EC, 2012). Article 41 (3) states that the EU vessels shall only catch surplus of the allowable catch as referred to in the UNCLOS article 62(2) and (3), and that the determination of the available resources should take due account of science in the respective RFMOs.

The draft Art. 41 (6) refers to making the ex-post and ex-ante evaluations of the FPAs "in good time" available before the Council considers a mandate for renewal of an agreement. This appears to be an improvement of a subject that has a hot potato for the European Commission for almost a decade. While the obligation of evaluations seems to be properly met with, the results are seldom made public on time for renegotiations. The EC-delegation therefore has the advantage of the evaluations well in time, but the negotiating partner, i.e. Madagascar, has not. This is not in line with the idea of a partnership, in which both parties should seek the best outcome with the benefits to both parties.

Article 42a of the draft reform CFP proposes that the EC shall endeavour in their FPAs a joint management of the resources. In Madagascar this would imply a strengthening of the IOTC and ensuring that the IOTC operates more effectively. It opens the door for negotiating regional agreements for tuna access, for example in the Western Indian Ocean. If adopted the EC should promote such regionalisation of tuna access in the Western Indian Ocean.

Despite announcements by the European Commission shortly after 2004 that it intended to reduce the public contribution to the licence fees, in recent years this has been less prominent and it is not expected that the EC will pursue this strongly. But the possibility certainly exists and could be explored. The draft Council text of June 2012 contains no reference to direct EU-support for obtaining fishing licences. This would be the component that many would refer to as subsidies for the European vessels. Coastal states normally demand a fee for a fishing licence. In the current FPAs the European Union contributes € 65 to the coastal states for every tonne of tuna caught in their EEZ, with a minimum advance payment. This is de facto a contribution to the operational costs of the European vessels.

In an analysis by the European Commission it is concluded that it is likely that the EU tuna vessel owners will not be in a position to pay the full licence fees to coastal states (EC, 2010). The paper states that *"(T)he final cost of access is likely to be a compromise between the current payments and the cost of private licences. If not, the international competitiveness of the EU fleet will be undermined; up to a point where flying the EU flag will be a disadvantage"*.

For this subject it will be of interest to follow the recent development of Mauritania. The new FPA between the EU and Mauritania came into force 1 August 2012 after seven negotiation rounds. The licence fees have increased considerably, but part of the European pelagic fleet will for the time being not buy any new licences. The real concern should be for the lack of sustainability conditions in the Mauritania FPA, despite the high increase in fees. When the Mauritanian government would have used the extra income boost to execute a thorough management plan for sustainable fisheries,

but the government has not made any serious attempts to do that and seems to only have its eyes on the fee increases. At the same time, Korean, Russian, Japanese, Chinese and other fleets are for the time being paying a much lower fee.

Another example is Senegal in West Africa, which did not renew its fisheries protocol with the EU in 2006 after 25 years. The Mauritanian and Senegal examples illustrate that the decisive partner for guaranteeing the sustainability of an FPA with the EU is the coastal state government. When the coastal state government would be courageous to withstand the pressure of short-term commercial interest, it may be possible to apply sustainability conditions consistently to all foreign fleets in its waters. This should be based on a modern fisheries management plan that has been developed with qualified scientific and technical expertise.

In case of Madagascar, it would appear in that nation's interest to invest in fisheries management, with a programme for capacity building and a long-term objective of controlling the foreign access to the national fish resources. One could encourage that the fleets have to comply with IOTC-resolutions and that the IOTC-advice for determining the surplus of the different stocks is followed. Subsequently Madagascar could sell the portion for the Malagasy EEZ to the highest bidder, but with limited compromise to the fishing conditions. Madagascar could also seek to work with its neighbouring coastal states to develop a joint regional access policy for foreign fleets, for example with regional minimum conditions. As suggested by Le Manach et al (2012), a fisheries policy should entail institutional support for both management and enforcement. Like elsewhere, the commercial tuna fleets have benefitted from a "divide and rule" strategy in the region and this needs to be curtailed. It is advised that Madagascar seek international expertise to this end.

Madagascar is a very poor country and investments are often offered for short-term benefits. This may be addressed by financial support that is earmarked to overcome a potential loss of income for some years. It will help Madagascar when the licence fees for fishing access would not be part of the national budget, thus making it easier to negotiate. That would require a reliable government structure that is prepared to withstand the commercial pressure that could arise.



3. COMPARISON WITH FPA'S WITH NEIGHBOURING COUNTRIES

In previous chapters references were made to other FPAs. It has been suggested to consider a regional approach to a fisheries partnership. Tuna are highly migratory and so are the tuna fleets that chase them. It shows the need for tuna fisheries management at a regional/international level. The draft EU-Madagascar protocol should use this opportunity. It should be interpreted to the letter and in the spirit of the regional EPA (see Chapter 4) in its terms of marine fisheries and cooperation.

Table 2 allows a limited comparison of some of the properties between several FPAs in the Western Indian Ocean. It is striking that none of the FPAs have an emphasis on sustainable fisheries, for example with necessary pre-conditions for a management plan and effective MCS-system, before allowing access in the first place. Sadly, since the table predominantly presents the conditions of the FPAs, the table has less to offer to the reader with a genuine interest in sustainability conditions.

COMPARISON OF FPAs IN WESTERN INDIAN OCEAN

	Madagascar		Seychelles	Comoros	Mauritius	Mozambique
period	2007-2012	2013-2014	2011-2014	2011-2014	2012-2014	2012-2014
species	UNCLoS list	adjustments to UNCLoS list	unclear, but reference to tuna and tuna-like species in Art. 5	<i>No reference to species</i>	UNCLoS list	UNCLoS list
# seiners	50	40	48	45	41	43
# of longliners	76	56	12	25	45	32
total	125	96	60	70	86	75
minimum tonnage/year	13,300	15,000	52,000	4,850	5,500	8,000
A -fin. compensation minimum/year	€ 864,500	€ 975,000	€ 3,380,000	€ 315,250	€ 375,500	€ 520,000
B - annual fee for sectorial support	€ 332.500	€ 525.000	€ 2.220.000	€ 300.000	€ 302.500	€ 460,000
-fin. compensation minimum/tonne/year						
B - annual fee for sectorial support	€ 25	€ 35	€ 43	€ 41	€ 58	€ 57.50
compensation per tonne						
C - advance vessels - seiners / tonne	€ 35	€ 35	€ 61.000 flat fee	€ 35	€ 35	€ 35
C - advance vessels - longliners / tonne	€ 35	€ 35	€ 35	€ 35	€ 35	€ 35
A+B+C, total compensation/tonne - EU+vessel owners	€ 125	€ 135	€ 143	€ 141	€ 158	€ 157,50
advance payment seiner	112t	140t	-	106t	106t	146t
longliner	100t or 48t	105t or 50t	120t or 90t	63t	90t or 50t	118t or 72t
# of seamen on board	20% of fleet of ACP-origin	20% of fleet of ACP-origin	minimum of 2 Seychellois per vessel	minimum of 1 Comorian per vessel	10 Mauritians for the fleet	minimum of 2/seiner, 1/longliner
transhipments at sea	equivocal	prohibited	prohibited	allowed	prohibited	prohibited, all transhipments in port inspected
observers at request of coastal state	+	seiners only	+	+	+	+
distance to FADs of coastal state	3nm	3nm	3nm	3nm	-	-
protected (coastal) zones	12nm	20nm	according to Seychelles law	10nm	15nm	12nm

Table 2. A selection of conditions in the present protocols of FPAs in neighbouring countries in the SWIO.

Species

The 2007-2012 Madagascar agreement is the first one that specified the species to beyond tuna species, referring to Annex 1 of UNCLOS, which lists highly migratory species that even includes cetaceans. Since the inception of FPAs in 2004, the EC has sought flexibility for the species in the WIO, and only Seychelles has a reference to the species that fall under the IOTC-responsibility. In other parts of the world FPAs refer mostly tuna and tuna-like species. It should become standard in the WIO to explicitly refer to the 31 species identified on the IOTC-code chart (www.iotc.org). The new draft protocol for 2013-2014 has defined a catch limit of 200 tons of sharks as bycatch in the longline fisheries, an unprecedented step in the history of FPAs. There has been no FPA in the region that introduced catch limits, not even for target tuna species.

Number of vessels/registration

It is not well explained why the EC fleet has large differences in the numbers of licences for longliners in the FPAs in the region. For Comoros there are only 25 licences, while for Madagascar there is room for 76 longliners.

Licenses were provided by Madagascar to various vessels that were on the IOTC-blacklist in 2002-2006. Since then, little has changed and there is still not a good understanding of the activities at sea. Mauritius includes a clause in its FPA that all vessels need to be in the IOTC-list of authorised fishing vessels. But this may have little effect as long as there are few if any conditions of registering vessels to the IOTC.

Tonnage reference level

The tonnage reference levels are quite varying between the different FPAs, and they appear to depend predominantly on the tuna availability as estimated in advance by the European fleets. There is no relationship with estimates of stock status, reference points or other components of a sustainable fisheries strategy.

Total compensation per tonne of tuna caught

The licence compensation consists of three parts: (A) The EU-contribution to the licence (€ 65/tonne), (B) the amount for the sectorial programme support that is paid by EU public money and which divided by the tonnage reference level is € 32/tonne sectorial compensation, and (C) the vessel owners contribution (€ 35/tonne). The total amount negotiated with the EU in the South Western Indian Ocean varies from € 132 for Madagascar to € 158/tonne for Mauritius and Mozambique, which is more than a 15% difference, see table 2.

Advance payment per tonne of tuna caught

This is an important feature of the agreements. Vessel owners need to pay this advance as a minimum when receiving the fishing licence. When they catch more than this pre-set level they need to pay a higher licence fee pro rata. Obviously payments will depend greatly on reporting and inspection. There is a high risk of non-reporting, and anecdotal reports confirm that this happens frequently in the region, even with on-board observers.

Seamen on board

Before the first FPA in 2007, the fishing agreements between Madagascar and the EU had provisions for Malagasy seamen on board of the EU-fleet. In the early years, provisions for 2 and later 6 seamen were included in the protocol. From 2001 to 2007, the protocols allowed for 40

Malagasy seamen on board the total fleet, and compensation in case they were not employed. In the latest protocol, this provision was changed to nationals from ACP-countries.

Mauritius has a provision for 10 Mauritian nationals for the fleet, Seychelles refers to 2 crew per seiner. The Mozambican FPA for 2012-2015 has a clause that at least two Mozambican seamen have to be hired per vessel. Where these are not on board, the vessel owners needs to pay a flat rate of € 30/day/person. For the Comoros this flat rate applies to one crew and is € 20/day/person. This seems a negotiable clause.

Distance to FADs at sea

EU-vessels are not allowed to come close to Fish Aggregating Devices (FADs) that are set by the coastal state industries. Mozambique and Mauritius do not have this clause in their FPA, possibly because their domestic vessels do not apply FADs.

Coastal zone protection

The coastal zone protection varies between the FPAs from 10nm in to 20nm in the draft 2013-14 EU-Madagascar agreement. This will provide a lot of goodwill amongst the local fishermen in Madagascar, but there are no apparent reasons to assume that the tuna vessels, which generally fish offshore, would be greatly opposed to such a measure.



4. THE REGIONAL ECONOMIC PARTNERSHIP AGREEMENT

There is a historic dependence between the two FPA-partners. The 10th Madagascar Action Plan 2008-2013 between Madagascar and the European Community provides for € 588m of structural aid to Madagascar through the 2000 Cotonou agreement in the ACP-EU partnership, as revised in Luxemburg (RM_CE, 2007). For the same period 2008-13, the development support of France was estimated at € 249-278m. This dependency undoubtedly affects the negotiations for new protocols of the FPA.

The regional Economic Partnership Agreement (EPA) came into force in May 2012 (EC, 2012). It is an agreement between the EU on one hand and six nations in the Western Indian Ocean on the other: Seychelles, Zambia, Zimbabwe, Madagascar, Comoros and Mauritius, referring to the group of six as Eastern and Southern Africa (ESA) states. This list does not include several other coastal states that are relevant to fisheries, Mozambique, Kenya and Tanzania. The EU is in the process of negotiating an EPA with Tanzania and Kenya are currently negotiating an EPA. The EPA contains a chapter on fisheries with explicit conditions on inter alia cooperation, compliance and the prevention of IUU fishing. The agreement stipulates in Chapter III Title II inter alia cooperation objectives for marine fisheries:

- a. strengthen cooperation in order to ensure the sustainable exploitation and management of fisheries resources as a strong basis for regional integration, given the straddling and migratory species which are shared among island and coastal States and as no individual ESA State has the capacity to ensure sustainability of the resource;
- b. ensure a more equitable share of the benefits derived from the fisheries sector;
- c. ensure effective monitoring control and surveillance (MCS) necessary for combating illegal, unreported and unregulated (IUU) fishing; and
- d. promote effective exploitation, conservation and management of the living marine resources in the exclusive economic zone (EEZ) and waters in which ESA States have jurisdiction based on international instruments, including UNCLOS, for the mutual social and economic benefit of the ESA States and the EC Party.

The objectives have many supportive clauses, ranging from support for scientific analyses, compliance by all vessels flying their flags with relevant national regional and international fisheries management measures, vessel management and post-harvest arrangements, prohibition of transshipments at sea, etc. It appears worthwhile for the government of Madagascar to analyse the various legal texts with the EU in order to arrive at a joint approach for future fisheries agreements that is consistent with the expressed intentions.

The tuna fleets in the Indian Ocean prefer to have access to all waters, in order not to be hindered when following the migratory tuna. There are formally no access restrictions in international waters, but they have to seek access to all the EEZs. The Indian Ocean Tuna Commission is the RFMO. According to a recent analysis published by the European Commission, European fleets have private agreements in the Indian Ocean with Kenya, Tanzania, Mauritius and (for Spain) French OCTs (COC, 2010).

All EU-FPA's in the region expire on 31 December 2014. This opens the door for the Western Indian Ocean states to work jointly on a future regime of regional minimum terms and conditions for fishing access by foreign fleets. An effective management system plus MCS-system are also best developed at the regional level. Data collection and assessment form a prerequisite for sustainable management of tuna fisheries. Coastal states in the region can share the burden of a common system, and for the EU it is the most efficient in terms of costs.

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ANNEX 1

The list of species under the responsibility of the Indian Ocean Tuna Commission, as listed in Annex B of the agreement of the establishment of the IOTC (www.iotc.org).

FAO English name	Nom FAO en français	Nombre FAO en español	Scientific name
Nom FAO en anglais	FAO French name	FAO Spanish name	Nom scientifique
Nombre FAO in inglés	Nombre FAO en francés	Nom FAO en español	Nombre científico
1. Yellowfin tuna	Albacore	Rabil	<i>Thunnus albacares</i>
2. Skipjack	Listao; Bonite à ventre rayé	Listado	<i>Katsuwonus pelamis</i>
3. Bigeye tuna	Patudo; Thon obèse	Patudo	<i>Thunnus obesus</i>
4. Albacore tuna	Germon	Atún blanco	<i>Thunnus alalunga</i>
5. Southern bluefin tuna	Thon rouge du sud	Atún del sur	<i>Thunnus maccoyii</i>
6. Longtail tuna	Thon migon	Atún tongol	<i>Thunnus tonggol</i>
7. Kawakawa	Thon oriental	Baroceta oriental	<i>Euthynnus affinis</i>
8. Frigate tuna	Auxide	Melva	<i>Auxis thazard</i>
9. Bullet tuna	Bonitou	Melva (=Melvera)	<i>Auxis rochei</i>
10. Narrow barred spanish mackerel	Thazard rayé	Carite estraido (Indo-pacífico)	<i>Scomber omorus commerson</i>
11. Indo-pacific king mackerel	Thazard ponctué	Carite (Indo-pacífico)	<i>Scomber omorus guttatus</i>
12. Indo-pacific blue marlin	Makaire bleu de l'Indo-pacifique	Aguja azul (Indo-pacífico)	<i>Makaira mazara</i>
13. Black marlin	Makaire noir	Aguja negra	<i>Makaira indica</i>
14. Striped marlin	Marlin rayé	Marlin rayado	<i>Tetraturus audax</i>
15. Indo-pacific sailfish	Voilier de l'Indo-pacifique	Pez vela (Indo-pacífico)	<i>Istiophorus platypterus</i>
16. Swordfish	Espadon	Pez espada	<i>Xiphias gladius</i>

The UNCLoS list of highly migratory species

Source: http://www.un.org/depts/los/convention_agreements/texts/unclos/annex1.htm

1. Albacore tuna: *Thunnus alalunga*
2. Bluefin tuna: *Thunnus thynnus*
3. Bigeye tuna: *Thunnus obesus*
4. Skipjack tuna: *Katsuwonus pelamis*
5. Yellowfin tuna: *Thunnus albacares*
6. Blackfin tuna: *Thunnus atlanticus*
7. Little tuna: *Euthynnus alletteratus*; *Euthynnus affinis*
8. Southern bluefin tuna: *Thunnus maccoyii*
9. Frigate mackerel: *Auxis thazard*; *Auxis rochei*
10. Pomfrets: *Family Bramidae*

11. Marlins: *Tetrapturus angustirostris*; *Tetrapturus belone*; *Tetrapturus pfluegeri*; *Tetrapturus albidus*; *Tetrapturus audax*; *Tetrapturus georgei*; *Makaira mazara*; *Makaira indica*; *Makaira nigricans*
12. Sail-fishes: *Istiophorus platypterus*; *istiophorus albicans*
13. Swordfish: *Xiphias gladius*
14. Sauries: *Scomberesox saurus*; *Cololabis saira*; *Cololabis adocetus*; *Scomberesox saurus scombroides*
15. Dolphin: *Coryphaena hippurus*; *Coryphaena equiselis*
16. Oceanic sharks: *Hexanchus griseus*; *Cetorhinus maximus*; Family *Alopiidae*; *Rhincodon typus*; Family *Carcharhinidae*; Family *Sphyrnidae*; Family *Isurida*
17. Cetaceans: Family *Physeteridae*, Family *Balaenopteridae*; Family *Balaenidae*; Family *Eschrichtiidae*; Family *Monodontidae*; Family *Ziphiidae*; Family *Delphinidae*

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